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9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0214]

RIN 1625-AA00

Safety Zones; Recurring Events in Captain of the Port Duluth Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent safety zones for annually recurring marine events in the Coast Guard Marine Safety Unit Duluth Captain of the Port (COTP) Zone. The safety zones in this proposed rule are needed to protect both spectators and participants from the hazards associated with the events. During the enforcement period of the safety zones, persons and vessels are prohibited from entering, transitioning through, remaining, anchoring or mooring within the zone unless specifically authorized by the COTP or designated representative.

DATES: Comments and related material must be received by the

Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2013-0214 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods. FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Judson Coleman, Chief of Waterways Management Marine Safety Unit Duluth, U.S. Coast Guard; telephone (218) 720-5286, Extension 111 or by e-mail Judson.A.Coleman@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2013-0214), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>), or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a

mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-0214] In the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0214) in the "SEARCH" box and click "Search." Click the "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation

West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Basis and Purpose

The purpose of this proposed rule is to establish necessary safety zones for recurring events. This rule is being proposed in order to safeguard against the hazards associated with annual marine events taking place in the Duluth Captain of the Port Zone.

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

C. Discussion of Proposed Rule

This rule proposes to establish 8 new safety zones in 33 CFR Part 165 for annual marine events in the Marine Safety Unit Duluth Captain of the Port (COTP) Zone. These events include fireworks displays for the 4th of July holiday, specifically the Duluth fourth festival, Cornucopia fireworks, Ashland fireworks and the Madeline Island fireworks, and other historically recurring marine events, including the Lake Superior Dragon Boat Festival (LSDBF), The Superior Man Triathlon, and the Point to LaPointe swim.

As large numbers of spectator vessels are expected to congregate in the location of these events, the safety zones in this proposed rule are needed to protect both spectators and participants from the hazards associated with the events. During the enforcement period of the safety zones, persons and vessels are prohibited from entering, transitioning through, remaining, anchoring or mooring within the zone unless specifically authorized by the COTP or designated

representative. The Coast Guard may be assisted by other federal, state and local agencies in the enforcement of these regulations.

Certain safety zones are listed without known dates or times. The Coast Guard will give notice of the enforcement of these safety zones by all appropriate means to the effected segments of the public, including publication in the Federal Register as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners and Local Notice to Mariners.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not deemed "significant" under the regulatory policies and procedures of the Department of

Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. Overall, we expect the economic impact of this proposed rule to be minimal and that a full Regulatory Evaluation is not necessary.

2. Small Entities

Under The Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the safety zones during the enforcement periods.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the safety zones will be of limited size and of short duration; vessels that can safely do so may navigate in all other portions of the waterway except for the areas designated as safety zones; and these safety zones have

been promulgated in the past with zero public comments submitted. Additionally, before the enforcement period, the Coast Guard will issue notice of the time and location of each safety zone through a Local Notice to Mariners and Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by

the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of a safety zone and is therefore categorically excluded under figure 2-1, paragraph 34(g) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measure, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.943 to read as follows:

§ 165.943 Annual events requiring safety zones in the Captain of the Port Duluth zone.

(a) Safety Zones. The following areas are designated safety zones:

(1) Bridgefest Regatta Fireworks; Houghton, MI.

(i) Location. All waters of the Keweenaw Waterway bounded by the arc of a circle with a 300-foot radius from the fireworks launch site with its center in position 47° 07' 28.35" N, 088° 35' 01.78" W.

(ii) Enforcement date and time. This event historically occurs in mid June. The Captain of the Port, Marine Safety Unit Duluth, will establish enforcement dates that will be

announced with a Notice of Enforcement and marine information broadcast.

(2) Lake Superior Dragon Boat Festival Fireworks; Superior, WI.

(i) Location. All waters of Superior Bay, WI within a 150 foot radius with its center at 46°43'23.5164"N 092°03'45.1944"W.

(ii) Enforcement date and time. This event historically occurs in late August. The Captain of the Port, Marine Safety Unit Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(3) Duluth Fourth Fest Fireworks; Duluth, MN.

(i) Location. All U.S. navigable waters of the Duluth Harbor Basin Northern Section within a 900 foot radius of position 46°46'19" N, 092°06'11" W.

(ii) Enforcement date and time. This event historically occurs on or around the 4th of July week. The Captain of the Port, Marine Safety Unit Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(4) Cornucopia Fireworks; Cornucopia, WI.

(i) Location. All waters of Siskiwit Bay bounded by a circle with a 300-foot radius surrounding the fireworks launch

site with its center in position 46°51'35" N, 091°06'10" W.

(ii) Enforcement date and time. This event historically occurs on or around the 4th of July week. The Captain of the Port, Marine Safety Unit Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(5) LaPointe Fireworks; LaPointe, WI.

(i) Location. All waters of Lake Superior bounded by the arc of a circle with a 375-foot radius from the fireworks launch site with its center in position 46° 46' 40.1" N, 090° 47' 22" W.

(ii) Enforcement date and time. This event historically occurs on or around the 4th of July week. The Captain of the Port, Marine Safety Unit Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(6) Ashland Fireworks; Ashland, WI.

(i) Location. All waters of Chequamegon Bay bounded by the arc of a circle with a 600-foot diameter from the fireworks launch site with its center in position 46° 35.50' N, 090° 53.0' W.

(ii) Enforcement date and time. This event historically occurs on or around the 4th of July week. The Captain of the Port, Marine Safety Unit Duluth, will establish enforcement

dates that will be announced with a Notice of Enforcement and marine information broadcast.

(7) Point to LaPointe Swim; LaPointe, WI.

(i) Location. All waters between Bayfield, WI and Madeline Island, WI within an imaginary line created by the following coordinates: 46° 48' 50.97"N, 090° 48' 44.28"W, moving southeast to 46° 46' 44.9N, 090° 47' 33.21"W, then moving northeast to 46° 46' 52.51"N 090° 47' 17.14"W, then moving northwest to 46° 49' 3.23"N 090° 48' 25.12"W and finally running back to the starting point.

(ii) Enforcement date and time. This event historically occurs in early August. The Captain of the Port, Marine Safety Unit Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(8) Superior Man Triathlon; Superior, WI.

(i) Location. All waters of the Duluth Harbor Basin, Northern Section, including the Duluth Entry encompassed in an imaginary line beginning at point 46 46' 36.1236"N 092 06' 06.987"W, running southeast to 46 46' 32.7534"N 092 06' 01.7382"W, running northeast to 46 46' 45.9228"N 092 05' 45.1818"W, running northwest to 46 46' 49.4718"N 092 05' 49.349"W and finally running southwest back to the starting point.

(ii) Enforcement date and time. This event historically occurs in late August. The Captain of the Port, Marine Safety Unit Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(b) Regulations.

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port, Marine Safety Unit Duluth, or the designated on-scene representative.

(2) This safety zone is closed to all vessel traffic except as authorized by the Captain of the Port, Marine Safety Unit Duluth, or the designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Marine Safety Unit Duluth, is any Coast Guard commissioned, warrant, or petty officer who has been designated to act on behalf of the Captain of the Port, Marine Safety Unit Duluth. The on-scene representative of the Captain of the Port, Marine Safety Unit Duluth, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Marine Safety Unit Duluth, or the designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within

the safety zone shall contact the Captain of the Port, Marine Safety Unit Duluth, or the designated on-scene representative to obtain permission to do so. Vessel operators given authorization to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Marine Safety Unit Duluth, or the on-scene representative.

Dated: April 25, 2013

K. R. BRYAN

Commander, U.S. Coast Guard

Captain of the Port, Marine Safety Unit Duluth

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